

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Streamlining the International
Section 214 Authorization Process
and Tariff Requirements

IB Docket No. 95-118

To: The Commission

COMMENTS OF AMERICATEL CORPORATION

AmericaTel Corporation ("AmericaTel"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby comments on the Commission's Notice of Proposed Rulemaking ("NPRM")^{1/} in the above-captioned proceeding.

AmericaTel thanks the Commission and the International Bureau for their careful review of the Section 214 authorization process and tariff requirements to which international carriers are currently subject. AmericaTel supports the Commission's conclusion that the dramatic growth of competition in the market for international telecommunications services has reduced the degree of regulation necessary to protect the public interest, and that the elimination or modification of certain regulations will increase

^{1/} Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118 (FCC 95-286), slip op. (released July 17, 1995).

No. of Copies rec'd
List A B C D E

economic efficiency, benefit consumers, and save time and money both for the telecommunications industry and the federal government.^{2/}

AmericaTel hereby supports the Commission's proposals to permit Section 214 applications for "global" service authority; to define "affiliation," for purposes of Section 214 authorizations discussed in the NPRM, based on control; to allow current and future authorized resellers of international services to resell services of any authorized, unaffiliated common carrier; to permit parties holding initial Section 214 authorizations to resell interconnected private lines for the provision of switched service to resell such lines to all countries then designated equivalent; and to identify standard conditions of Section 214 authorizations in its rules.

I. The Commission Should Permit Section 214 Applications For "Global" Service Authority.

The Commission proposes in the NPRM to amend Sections 63.01 and 63.15 of its rules to allow facilities-based carriers to file initial Section 214 applications seeking the broadest Section 214 authority available in terms of facilities, services and countries served.^{3/} The Commission would grant "global" authority under this procedure to use half-circuits on all previously and subsequently authorized U.S. common carrier and noncommon carrier facilities and any necessary foreign connecting facilities, including both noncommon

^{2/} See id. at ¶¶ 1, 7.

^{3/} See id. at ¶ 10. Such applications would be subject to an exclusion list that the Commission would publish, identifying countries or facilities on which there are restrictions or for which the Commission must make certain findings in authorizations. See id.

carrier and common carrier submarine cables landing in the United States, Intelsat satellites, U.S. separate system satellites and the U.S. earth stations licensed to communicate with the satellites.^{4/} The Commission also proposes that, once a nondominant facilities-based carrier obtains an initial Section 214 authorization -- which could be for global or specific capacity on a noncommon carrier system -- it would not need to file further Section 214 applications to add circuits on noncommon carrier facilities (subject to the provisions of the Commission's proposed exclusion list).^{5/} AmericaTel urges the Commission to implement these proposals, which would reduce the costs and efforts associated with the Section 214 application process for the Commission and applicants.

II. The Commission Should Define "Affiliation" With A Foreign Carrier, For Purposes of Section 214 Authorizations, Based On Control.

The Commission proposes to process "global" Section 214 applications using the same streamlined processing procedures that it uses for resale applications, in cases where the applications are "submitted by nondominant facilities-based carriers without foreign affiliations as defined by our rules"^{6/} The Commission also proposes that "carriers regulated as dominant on any route, or carriers that have a foreign affiliation as defined by our rules, may apply for global Section 214 authority on routes where they are

^{4/} See id. at ¶ 12.

^{5/} See id. at ¶ 26. See also supra n.3.

^{6/} NPRM, FCC 95-286, slip op. at ¶ 10.

nondominant. Such applications, however, would not be subject to streamlined processing."^{7/} Accordingly, each Section 214 applicant would be required to certify, among other things, whether or not it has an affiliation with a foreign carrier.^{8/} For purposes of this certification, the Commission proposes the following definition of "affiliation:"

(i) Affiliation is defined to include: A controlling interest by the applicant, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier, or a controlling interest in the applicant by a foreign carrier, or by any entity that directly or indirectly controls a foreign carrier.^{9/}

AmericaTel supports this definition of "affiliation," which is identical to the current definition of the term in Section 63.01(r)(1)(i) of the Commission's rules. In establishing the definition in Section 63.01(r)(1)(i) in 1992, the Commission stated that, "[a]bsent control . . . the foreign carrier would not be in a position to direct the actions of the U.S. carrier, and we think the U.S. carrier would be unlikely to risk sanctions by this Commission for participating in discriminatory conduct that violated Commission rules or policy, or any conditions of its Section 214 certificate."^{10/} These conclusions are as valid today as they were when the Commission first reached them.

^{7/} Id. at ¶ 15.

^{8/} See id. at Appendix A, Proposed Rule § 63.XX(h).

^{9/} Id. at Appendix A, Proposed Rule § 63.XX(h)(1)(i).

^{10/} Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7332 (1992).

AmericaTel notes that the Commission is currently considering the appropriate definition of "affiliation" for purposes of granting Section 214 entry authorizations to foreign carriers that wish to enter the U.S. market, as well as for purposes of post-entry regulation, in its proceeding entitled Market Entry and Regulation of Foreign-affiliated Entities.^{11/} In its Reply Comments in that proceeding, AmericaTel urged the Commission to retain the controlling interest test for "affiliation" specified in its rules for both purposes.^{12/} AmericaTel stated that, if the Commission should choose to employ any non-controlling benchmark level of ownership in defining "affiliation" for purposes of granting Section 214 entry authorizations to foreign carriers, that level should be at least 25 percent.^{13/}

AmericaTel also stated that, regardless of any more stringent definition of "affiliation" that the Commission might adopt for purposes of U.S. market entry authorizations in that proceeding, it should preserve the current, control-based definition of "affiliation" that it established in its International Services decision for purposes of post-entry regulation. AmericaTel observed that the current definition of "affiliation" provides a sufficient safeguard against anticompetitive behavior to achieve the Commission's goals, and that the superficial appeal of preserving abstract regulatory symmetry between the two definitions would be outweighed by the cost and inconvenience of administering an otherwise

^{11/} 10 FCC Rcd 4844 (1995).

^{12/} Reply Comments of AmericaTel Corporation, IB Docket No. 95-22, RM-8355, RM-8392 (filed May 12, 1995) at 10-12 ("AmericaTel Foreign Carrier Entry Reply Comments").

^{13/} See id. at 10-11.

unnecessary change in regulations.^{14/} AmericaTel believes that these observations are equally applicable here, and therefore requests that the Commission incorporate the AmericaTel Foreign Carrier Entry Reply Comments into the instant proceeding.

III. All Current And Future Authorized Resellers of International Services Should Be Permitted To Resell Services Of Any Authorized Unaffiliated Common Carrier.

The Commission proposes to repeal Section 63.01(k)(6)(ii) of its rules, which requires applicants that seek to provide service through the resale of the international switched or private line services of another U.S. carrier to specify the names of the U.S. carriers and the specific FCC tariffs to be resold.^{15/} The Commission would instead allow current and future authorized resellers of international services to resell the services of any authorized, unaffiliated common carrier, pursuant to that carrier's tariff or contract.^{16/} Entities seeking to resell the services of an affiliated common carrier, however, would need to file for separate Section 214 authority.^{17/} AmericaTel supports these proposals, which would enable resellers to expand the range of carriers that they use as new facilities-based carriers emerge in the global telecommunications marketplace. AmericaTel also supports the Commission's Proposed Rule Sections 63.12(c)(2) and (3), which make clear that the Commission intends to define "affiliation" for purposes of judging Section 214 applications

^{14/} See id. at 11-12.

^{15/} NPRM, FCC 95-286, slip op. at ¶ 18.

^{16/} See id. at ¶ 19.

^{17/} See id.

for resale authority using the definition in Proposed Rule Section 63.XX(h)(1).^{18/} For the sake of clarity and consistency, AmericaTel urges the Commission to reference Section 63.XX(h)(1) in Proposed Rule Section 63.12(c)(1) as well.^{19/}

IV. Initial Section 214 Authorizations To Resell Interconnected Private Lines To Provide Switched Service Should Cover All Countries Then Designated Equivalent.

The Commission proposes that a carrier's initial Section 214 authorization to resell international interconnected private lines in the United States to provide switched service cover all countries which the Commission has then found to afford resale opportunities equivalent to those available under U.S. law.^{20/} A carrier thus certified would no longer need to obtain further Section 214 authority to serve additional countries that the Commission later finds to offer such equivalent opportunities.^{21/} AmericaTel supports the Commission's proposal, which can only engender greater competition in the international telecommunications market.

^{18/} See id. at Appendix A, Proposed Rule §§ 63.12(c)(2),(3).

^{19/} AmericaTel notes that Section 63.XX(h)(4) of the Commission's Proposed Rules, which also relates to the resale of international services, contains what appears to be a typographical error. That subsection states: "For purposes of this paragraph, affiliation is defined as in paragraph (r)(1)(i) of this section" Id. at Appendix A, Proposed Rule Section 63.XX(h)(4). AmericaTel believes that the subsection should refer instead to paragraph (h)(1)(i).

^{20/} See id. at ¶¶ 21-22.

^{21/} See id.

V. The Commission Should Identify Standard Conditions Of Section 214 Authorizations In Its Rules.

Finally, the Commission proposes to create a new section of its rules that would identify the standard conditions that it normally places on carriers in Section 214 authorizations.^{22/} The new rule section would include:

(1) the prohibition on the resale of private lines for the provision of international switched services unless the country is deemed equivalent; (2) the requirement to file copies of operating agreements entered into with foreign correspondents and all other agreements specified under Section 43.51 of the Commission's rules; (3) the requirement to file applicable tariffs; (4) the requirement to file annual reports of overseas telecommunications traffic; and (5) the submission of circuit status reports.^{23/}

AmericaTel urges the Commission to adopt this proposed rule section, which, as the Commission observes, would better enable carriers to determine the terms of their authorizations and speed implementation of the Commission's proposed streamlined processing procedures for Section 214 applications.^{24/}

^{22/} See id. at ¶¶ 43.

^{23/} Id.

^{24/} See id. at ¶ 44.

VI. Conclusion.

For the foregoing reasons, AmericaTel urges the Commission to adopt the proposals in the NPRM as identified and discussed herein.

Respectfully submitted,

AMERICATEL CORPORATION

By: Walter P. Jacob
Raul R. Rodriguez
Stephen D. Baruch
Walter P. Jacob

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

August 23, 1995

Its Attorneys